

1
2 An act relating to taxation; providing
3 legislative intent with respect to the
4 municipal public service tax; amending s.
5 166.231, F.S.; providing that specified
6 governmental bodies are exempt from said tax;
7 exempting certain religious institutions from
8 the tax on telecommunication services;
9 providing that state universities shall not be
10 deemed sellers of taxable items under certain
11 circumstances; revising provisions relating to
12 determination of the situs of telecommunication
13 services; providing requirements for returns
14 and remittance of the tax on telecommunication
15 services; requiring certain purchasers claiming
16 exemptions to certify that they are qualified
17 therefor; requiring governmental bodies that
18 sell taxable services to nonexempt users to
19 collect and remit the tax; creating s. 166.233,
20 F.S.; providing requirements for levy of the
21 tax; specifying effective dates; providing
22 duties of the Department of Revenue; requiring
23 municipalities to furnish certain information
24 relating to the tax to the Department of
25 Revenue and to other persons; providing for
26 fees; providing limitations on the
27 responsibilities of sellers if information is
28 not furnished as required; providing procedures
29 that apply when more than one municipality
30 claims an address or when information does not
31 conform to the seller's address records;

1 creating s. 166.234, F.S.; providing procedures
2 for audits of sellers by municipalities;
3 prohibiting contingent fee audits; prescribing
4 record retention requirements for sellers;
5 providing time limitations on assessments of
6 taxes and on applications for refunds or
7 credits; providing for offsets of overpayments
8 against underpayments and for refunds and
9 credits; authorizing municipalities to assess
10 interest and penalties; providing requirements
11 with respect to a determination by a
12 municipality of amounts of tax; providing
13 protest procedures and judicial remedies;
14 providing for settlement or compromise of a
15 seller's liability for taxes; providing for
16 interest on refunds if a law is enacted
17 requiring interest on sales or gross receipts
18 tax refunds; providing rights and duties of
19 municipalities and sellers; providing for
20 communications between municipalities with
21 respect to specified matters relating to audits
22 and the identities of sellers; prescribing the
23 circumstances for assessment of audit expenses
24 against a seller; providing a schedule for
25 application of the requirements of the act;
26 amending ss. 203.01 and 203.63, F.S., relating
27 to taxes on gross receipts for utility services
28 and on interstate and international
29 telecommunication services; specifying that
30 certain sums charged as taxes under said
31 sections and under ch. 212, F.S., shall not be

1 subject to refund, notwithstanding requirements
2 relating to separate statement of such taxes on
3 bills or invoices; providing legislative
4 intent; providing an appropriation; providing
5 for severability; providing an effective date.
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7 Be It Enacted by the Legislature of the State of Florida:
8

9 Section 1. It is the intent of the Legislature to
10 improve the ability of municipalities and sellers to
11 administer the municipal public service tax at reasonable
12 cost, to protect sellers who act in good faith, to improve the
13 information furnished to sellers to facilitate remitting
14 collected tax proceeds to the correct municipality, and to
15 prescribe a procedural framework for administration and
16 auditing functions. The Legislature finds that this act
17 fulfills an important state interest.

18 Section 2. Section 166.231, Florida Statutes, 1996
19 Supplement, is amended to read:

20 166.231 Municipalities; public service tax.--

21 (1)(a) A municipality may levy a tax on the purchase
22 of electricity, metered natural gas, liquefied petroleum gas
23 either metered or bottled, manufactured gas either metered or
24 bottled, and water service. The tax shall be levied only upon
25 purchases within the municipality and shall not exceed 10
26 percent of the payments received by the seller of the taxable
27 item from the purchaser for the purchase of such service.
28 Municipalities imposing a tax on the purchase of cable
29 television service as of May 4, 1977, may continue to levy
30 such tax to the extent necessary to meet all obligations to or
31 for the benefit of holders of bonds or certificates which were

1 issued prior to May 4, 1977. Purchase of electricity means
2 the purchase of electric power by a person who will consume it
3 within the municipality.

4 (b) The tax imposed by paragraph (a) shall not be
5 applied against any fuel adjustment charge, and such charge
6 shall be separately stated on each bill. The term "fuel
7 adjustment charge" means all increases in the cost of utility
8 services to the ultimate consumer resulting from an increase
9 in the cost of fuel to the utility subsequent to October 1,
10 1973.

11 (2) Services competitive with those enumerated in
12 subsection (1) or subsection (9), as defined by ordinance,
13 shall be taxed on a comparable base at the same rates.
14 However, fuel oil shall be taxed at a rate not to exceed 4
15 cents per gallon. However, for municipalities levying less
16 than the maximum rate allowable in subsection (1), the maximum
17 tax on fuel oil shall bear the same proportion to 4 cents
18 which the tax rate levied under subsection (1) bears to the
19 maximum rate allowable in subsection (1).

20 (3) A municipality may exempt from the tax imposed by
21 this section any amount up to, and including, the first 500
22 kilowatt hours of electricity purchased per month for
23 residential use. Such exemption shall apply to each separate
24 residential unit, regardless of whether such unit is on a
25 separate meter or a central meter, and shall be passed on to
26 each individual tenant.

27 (4)(a) The purchase of natural gas or fuel oil by a
28 public or private utility, either for resale or for use as
29 fuel in the generation of electricity, or the purchase of fuel
30 oil or kerosene for use as an aircraft engine fuel or
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1 propellant or for use in internal combustion engines is exempt
2 from taxation hereunder.

3 (b) A municipality may exempt from the tax imposed by
4 this section the purchase of metered or bottled gas (natural
5 liquefied petroleum gas or manufactured) or fuel oil for
6 agricultural purposes. As used in this paragraph,
7 "agricultural purposes" means bona fide farming, pasture,
8 grove, or forestry operations, including horticulture,
9 floriculture, viticulture, dairy, livestock, poultry, bee, and
10 aquaculture.

11 (5) Purchases by the United States Government, this
12 state, and all counties, school districts, and municipalities
13 of the state, and by public bodies exempted by law or court
14 order, are exempt from the tax authorized by this section.A
15 municipality may exempt from the tax imposed by this section
16 ~~taxation hereunder~~ the purchase of ~~the~~ taxable items by ~~the~~
17 ~~United States Government, this state,~~any other public body as
18 defined in s. 1.01, or by a nonprofit corporation or
19 cooperative association organized under chapter 617 which
20 provides water utility services to no more than 13,500
21 equivalent residential units, ownership of which will revert
22 to a political subdivision upon retirement of all outstanding
23 indebtedness, and shall exempt purchases by any recognized
24 church in this state for use exclusively for church purposes,
25 and shall exempt from the tax authorized by subsection (9)
26 purchases made by any religious institution that possesses a
27 consumer certificate of exemption issued under chapter 212.

28 (6) A municipality may exempt from the tax imposed by
29 this section any amount up to, and including, the total amount
30 of electricity, metered natural gas, liquefied petroleum gas
31 either metered or bottled, or manufactured gas either metered

1 or bottled purchased per month, or reduce the rate of taxation
2 on the purchase of such electricity or gas when purchased by
3 an industrial consumer which uses the electricity or gas
4 directly in industrial manufacturing, processing, compounding,
5 or a production process, at a fixed location in the
6 municipality, of items of tangible personal property for sale.
7 The municipality shall establish the requirements for
8 qualification for this exemption in the manner prescribed by
9 ordinance. Possession by a seller of a written certification
10 by the purchaser, certifying the purchaser's entitlement to an
11 exemption permitted by this subsection, relieves the seller
12 from the responsibility of collecting the tax on the
13 nontaxable amounts, and the municipality shall look solely to
14 the purchaser for recovery of such tax if it determines that
15 the purchaser was not entitled to the exemption. Any
16 municipality granting an exemption pursuant to this subsection
17 shall grant the exemption to all companies classified in the
18 same SIC Industry Major Group Number.

19 (7) The tax authorized hereunder shall be collected by
20 the seller of the taxable item from the purchaser at the time
21 of the payment for such service. The seller shall remit the
22 taxes collected to the municipality in the manner prescribed
23 by ordinance, except that remittance of taxes by sellers of
24 telecommunication services shall be governed by paragraph
25 (9)(f). Except as otherwise provided in ss. 166.233 and
26 166.234, the seller shall be liable for taxes that are due and
27 not remitted to the municipality. This shall not bar the
28 seller from recovering such taxes from purchasers; however,
29 the universities in the State University System shall not be
30 deemed a seller of any item otherwise taxable hereunder when
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1 such item is provided to university residences incidental to
2 the provision of educational services.

3 ~~(8) A municipality shall notify in writing any known~~
4 ~~seller of items taxable hereunder of any change in the~~
5 ~~boundaries of the municipality or in the rate of taxation.~~

6 (8)(9)(a) Beginning July 1, 1995, a municipality may
7 by ordinance exempt not less than 50 percent of the tax
8 imposed under this section on purchasers of electrical energy
9 who are determined to be eligible for the exemption provided
10 by s. 212.08(15) by the Department of Revenue. The exemption
11 shall be administered as provided in that section. A copy of
12 any ordinance adopted pursuant to this subsection shall be
13 provided to the Department of Revenue not less than 14 days
14 prior to its effective date.

15 (b) If ~~in the event~~ an area that is nominated as an
16 enterprise zone pursuant to s. 290.0055 has not yet been
17 designated pursuant to s. 290.0065, a municipality may enact
18 an ordinance for such exemption; however, the ordinance shall
19 not be effective until such area designated pursuant to s.
20 290.0065.

21 (c) This subsection shall expire and be void on
22 December 31, 2005, except that any qualified business which
23 has satisfied the requirements of this subsection prior to
24 December 31, 2005, shall be allowed the full benefit of the
25 exemption allowed under this subsection as if this subsection
26 had not expired on December 31, 2005.

27 (9)(10) A municipality may levy a tax on the purchase
28 of telecommunication services as defined in s. 203.012 as
29 follows:

30 (a)1. Only upon purchases within the municipality of
31 local telephone service as defined in s. 203.012(3) at a rate

1 not to exceed 10 percent of the monthly recurring customer
2 service charges, excluding public telephone charges collected
3 on site, access charges, and any customer access line charges
4 paid to a local telephone company; or

5 2. Only upon purchases within the municipality of
6 telecommunications service that ~~which~~ originates and
7 terminates in this state at a rate not to exceed 7 percent of
8 the total amount charged for any telecommunications service
9 provided within the municipality or, if the location of the
10 telecommunications service provided cannot be determined as
11 part of the billing process, the total amount billed for such
12 telecommunications service to a telephone or telephone number,
13 a telecommunications number or device, a service address, or a
14 customers' billing address located within the municipality,
15 excluding public telephone charges collected on site, charges
16 for any foreign exchange service or any private line service
17 except when such services are used or sold as a substitute for
18 any telephone company switched service or dedicated facility
19 by which a telephone company provides a communication path,
20 access charges, and any customer access line charges paid to a
21 local telephone company. However, telecommunications service
22 as defined in s. 203.012(5)(b) shall be taxed only on the
23 monthly recurring customer service charges excluding variable
24 usage charges.

25 (b) For the purpose of compensating the seller, the
26 seller shall be allowed 1 percent of the amount of the tax
27 collected and due to the municipality in the form of a
28 deduction from the amount collected for remittance. The
29 deduction shall be allowed as compensation for the keeping of
30 records and for the collection of, and the remitting of, the
31 tax.

1 ~~(c) A municipality shall elect by ordinance the tax~~
2 ~~specified in subparagraph (a)1. or subparagraph (a)2., and any~~
3 ~~such election shall not be changed until after the expiration~~
4 ~~of at least 12 months after the effective date of the~~
5 ~~ordinance levying the tax specified in such subparagraph. A~~
6 ~~municipality shall notify the companies responsible for~~
7 ~~collecting such tax at least 120 days prior to such change of~~
8 ~~election.~~

9 ~~(d) A municipality electing by ordinance the tax~~
10 ~~specified in subparagraph (a)2. shall provide to a~~
11 ~~telecommunications service provider who is responsible for~~
12 ~~collecting the tax, upon its request, a printed alphabetical~~
13 ~~listing of all street names including block numbers and street~~
14 ~~numbers for streets which cross or form municipal boundaries~~
15 ~~within the municipality for use by the provider of the~~
16 ~~telecommunications service in calculating the proper amount of~~
17 ~~tax payable to the municipality. The municipality shall be~~
18 ~~responsible for updating this listing as changes occur and for~~
19 ~~providing this information to the telecommunications service~~
20 ~~provider. The provider, in turn, shall be responsible for~~
21 ~~charging the tax only to service and billing addresses~~
22 ~~contained in this listing. The municipality shall be entitled~~
23 ~~to collect a fee not to exceed the actual cost of providing~~
24 ~~the information to the telecommunications service provider~~
25 ~~requesting it.~~

26 ~~(c)(e)~~ A municipality may audit the records of any
27 provider of telecommunications service taxable by the such
28 municipality under s. 166.234. ~~each such provider shall~~
29 ~~provide to the municipality, upon 60 days' notice, access to~~
30 ~~all applicable records for such telecommunications service.~~
31 ~~In an audit, the telecommunications service provider shall be~~

1 ~~liable only for its taxable accounts collected corresponding~~
2 ~~to the information provided to it by the municipality.~~
3 However, any information received by the municipality or its
4 agent in connection with such audit is confidential and exempt
5 from the provisions of s. 119.07(1).

6 (d)~~(f)~~1. If the sale of a taxable telecommunication
7 service also involves the sale of an exempt cable television
8 service, the tax shall be applied to the value of the taxable
9 service when it is sold separately.

10 2. If the company does not offer this service
11 separately, the consideration paid shall be separately
12 identified and stated with respect to the taxable and exempt
13 portions of the transaction as a condition of the exemption.

14 3. The amounts identified as taxable in subparagraph
15 2. shall not be less than the statewide average tariff rates
16 set forth by the local exchange telecommunications companies
17 in the tariffs filed with the Public Service Commission on
18 January 1, 1995, and on January 1 of each year thereafter for
19 the equivalent services subject to this section. The Public
20 Service Commission shall publish the statewide average tariff
21 rates annually, beginning on January 1, 1996.

22 4. If the total amount of municipal utility tax
23 collected by a municipality or charter county from
24 telecommunication services pursuant to this subsection for the
25 period of July 1, 1995, to June 30, 1996, is less than the
26 amount collected for the period July 1, 1994, to June 30,
27 1995, the municipality or charter county shall assess each
28 company that remits such tax a pro rata share of the
29 shortfall. The shortfall shall be prorated based on the
30 amount of tax remitted by each company for the period July 1,
31 1995, to June 30, 1996, and the total amount of tax remitted

1 for the same period. By September 1, 1996, the municipality
2 or charter county shall certify to each company the amount of
3 additional tax owed and the tax shall be remitted to the
4 municipality or charter county by October 1, 1996. Provided,
5 however, that this assessment may only be imposed if, in
6 addition to the conditions above, a municipality or charter
7 county has levied the applicable maximum tax rate allowed
8 under this paragraph during the period July 1, 1995, and June
9 30, 1996, and has not switched between the two options allowed
10 under subparagraph~~(f)~~1. or subparagraph~~(f)~~2. during the
11 period July 1, 1995, and June 30, 1996.

12 (e) Purchases of local telephone service or other
13 telecommunications service for use in the conduct of a
14 telecommunications service for hire or otherwise for resale
15 are exempt from the tax imposed by this subsection.

16 (f) A seller of services which are subject to the tax
17 imposed by a municipality under this subsection shall file a
18 return with the municipality each month. The form of the
19 return shall be determined by the seller, and the return shall
20 be deemed sufficient if it identifies the name and address of
21 the seller, the period of the return, the amount collected
22 from the sale of taxable services, any collection allowance
23 taken, the amount of tax remitted with the return, and the
24 name and telephone number of a person authorized by the seller
25 to respond to inquiries from municipalities concerning the
26 seller's administration of the tax. A municipality may not
27 require any return or payment of public service tax other than
28 on a date returns and payments of tax are required under
29 chapter 212. However, a municipality may grant an extension of
30 the due date for a return or payment upon written request from
31 the seller. The deduction authorized by paragraph (b) shall

1 not be allowed in the event of an untimely return, unless the
2 seller has in writing requested and been granted an extension
3 of time for filing such return. Extensions of time shall be
4 granted if reasonable cause is shown, whether requested before
5 or after the due date of the return.

6 (g) Notwithstanding any other provision of this
7 section, in the event the total amount of tax anticipated to
8 be collected within a calendar quarter does not exceed \$120,
9 the seller of such service may, with the written authorization
10 of the municipality, remit the taxes collected during such
11 calendar quarter to the municipality quarterly. In such case,
12 the tax shall be due on or before the 20th day of the month
13 following the end of the calendar quarter in which the taxes
14 were collected.

15 (10) A purchaser who claims an exemption under
16 subsection (4), subsection (5), or paragraph (9)(e) shall
17 certify to the seller that he or she qualifies for the
18 exemption, which certification may encompass all purchases
19 after a specified date or other multiple purchases. For
20 purchases made under paragraph (9)(e) which are exempted, upon
21 the presentation of a certificate, from the tax imposed by
22 chapter 212, the certification required by this subsection may
23 be satisfied by presentation of a certificate that satisfies
24 the requirements of chapter 212. A seller accepting the
25 certification required by this subsection is relieved of the
26 obligation to collect and remit tax; however, a governmental
27 body that is exempt from the tax authorized by this section
28 shall not be required to furnish such certification, and a
29 seller is not required to collect tax from such an exempt
30 governmental body.

31

1 (11) Governmental bodies which sell or resell taxable
2 service to nonexempt end users must collect and remit the tax
3 levied under this section.

4 Section 3. Section 166.233, Florida Statutes, is
5 created to read:

6 166.233 Public service tax; effective dates;
7 procedures for informing sellers of tax levies and related
8 information.--

9 (1) As used in this section and ss. 166.231, 166.232,
10 and 166.234:

11 (a) "Department" means the Department of Revenue or
12 its designated agent.

13 (b) "Effective date," with respect to any levy, repeal
14 of a levy, or update to a list required under this section,
15 means the effective date of the related obligation or change
16 in the obligation of sellers to collect the tax; however, with
17 respect to taxable service that is regularly billed on a
18 monthly cycle basis, each levy, repeal, or update applies to
19 any bill dated on or after the effective date of such event.

20 (c) "Levy" means and includes the imposition of a tax
21 under s. 166.231 or s. 166.232, all changes in the rate of a
22 tax imposed under either of those sections, and all changes of
23 election under s. 166.231(9)(a).

24 (d) "Seller" means a person who sells a service that
25 is subject to a levy.

26 (2)(a) A tax levy must be adopted by ordinance, and
27 the effective date of every levy or repeal thereof must be a
28 subsequent January 1, April 1, July 1, or October 1. A
29 municipality shall notify the department of the adoption or
30 repeal of a levy at least 120 days before the effective date
31 thereof. Such notification must be furnished on a form

1 prescribed by the department and must specify the services
2 taxed under the authority of s. 166.231 or s. 166.232,
3 including any election under s. 166.231(9)(a), the rate of tax
4 applied to each service, the effective date of the levy or
5 repeal thereof, and the name, mailing address, and telephone
6 number of a person designated by the municipality to respond
7 to inquiries concerning the tax. The department shall maintain
8 this information for the purpose of responding to inquiries
9 with respect thereto, and any person may in writing request
10 such information from the department. For purposes of this
11 section, a response to such a person is timely if in writing
12 and dated no later than 20 days after the receipt of the
13 request. The department shall charge such persons a fee to
14 recover the actual cost of maintaining and furnishing such
15 information. The department has no liability for any loss of
16 or decrease in revenue by reason of any error, omission, or
17 untimely action that results in the nonpayment of the tax
18 imposed under s. 166.231 or s. 166.232. The provisions of this
19 paragraph which prescribe effective dates and require
20 municipalities to furnish notifications to the department do
21 not apply to taxes levied on service, other than
22 telecommunication service, provided by the municipality
23 levying the tax or by a separate utility authority, board, or
24 commission of the municipality.

25 (b) The department may contract with a private entity
26 to maintain and furnish the information described in paragraph
27 (a); however, the department shall establish the fee charged
28 to persons requesting that information.

29 (3) A municipality shall provide to any person, within
30 20 days following receipt of the person's written request, a
31 copy of the ordinance adopting any levy and all amendments

1 thereto, and shall advise such person in writing of the types
2 of media on which the lists described in this subsection are
3 available, the charges, if any, for supplying the lists on
4 each available medium, and the address to which a request for
5 such lists should be transmitted. Within 20 days following
6 receipt of a written request therefor accompanied by payment
7 of the cost, the municipality shall transmit the following to
8 the person requesting them:

9 (a) A list containing each street name, known street
10 name aliases, street address number ranges, applicable
11 directionals, and zip codes associated with each street name,
12 for all street addresses located within the municipality. For
13 a range of street address numbers located within a
14 municipality which consists only of odd or even street
15 numbers, the list must specify whether the street numbers in
16 the range are odd or even. The list shall be alphabetical,
17 except that numbered streets shall be in numerical sequence;

18 (b) A list containing each postal zip code and all the
19 city names associated therewith for all zip codes assigned to
20 geographic areas located entirely within the municipality,
21 including zip codes assigned to post office boxes; and

22 (c) A sequential list containing all post office box
23 number ranges and the city names and zip codes associated
24 therewith, for all post office boxes located within the
25 municipality, except that post office boxes with postal zip
26 codes entirely within the municipality which are included on
27 the list furnished under paragraph (b) need not be duplicated.

28
29 The lists shall be printed, except that, if a list is
30 available on another medium, the municipality shall, upon
31 request, furnish the list on such medium in addition to or in

1 lieu of the printed lists. The municipality shall be
2 responsible for updating the lists as changes occur and for
3 furnishing this information to all sellers affected by the
4 changes. Each update shall specify an effective date which
5 shall be either the next ensuing January 1, April 1, July 1,
6 or October 1; shall be furnished to sellers not less than 60
7 days prior to the effective date; and shall identify the
8 additions, deletions, and other changes to the preceding
9 version of the list. The seller shall be responsible for
10 charging the tax only to service and billing addresses
11 contained in the lists which include all the required elements
12 required by this subsection, including lists furnished to it
13 by a municipality without the seller's request. The
14 municipality shall be entitled to collect a fee not to exceed
15 the actual cost of duplicating the information furnished to
16 the person requesting it.

17 (4) The obligation of a seller to collect and remit
18 the tax for any municipality is conditioned upon the timely
19 availability to the seller of accurate information as
20 described in subsections (2) and (3) in the manner prescribed
21 in those subsections. For purposes of determining the
22 timeliness of such information, the date of a request,
23 response, update, or other transmittal is the date received.
24 If any such information is not timely furnished to a seller,
25 any related obligation to collect and remit tax is suspended
26 during the period of delay, except that:

27 (a) If a request for information described in
28 subsection (2) or subsection (3) precedes the date on which a
29 municipality is required to furnish notification to the
30 department as prescribed in subsection (2), the lack of a
31

1 timely response to the request does not affect the seller's
2 obligation to collect and remit tax for that municipality.

3 (b) If a seller is properly collecting and remitting
4 tax on a taxable service from customers within a municipality
5 as of the date of any request for information under subsection
6 (2) or subsection (3), the lack of a timely response to the
7 request does not affect the seller's obligation to continue
8 collecting and remitting the tax levied on the same service
9 from the same customers.

10 (c) If a failure to furnish timely information under
11 subsection (2) or subsection (3) causes a delay in a seller's
12 receipt of a list or update required by subsection (3) to a
13 date less than 60 days before the effective date of a levy or
14 update, the obligation to collect and remit tax pursuant
15 thereto may not commence until the next subsequent January 1,
16 April 1, July 1, or October 1.

17 (5) If it is determined from lists or updates
18 furnished under subsection (3) that more than one municipality
19 claims the same address or group of addresses, the seller
20 shall notify the municipalities affected within 60 days. Upon
21 resolution of the competing claims, the affected
22 municipalities shall furnish the seller with a signed
23 agreement describing the resolution. The seller shall begin
24 collecting and remitting tax pursuant to the agreement as of
25 the next ensuing January 1, April 1, July 1, or October 1 that
26 is at least 60 days after its receipt of the signed agreement.
27 Prior to such date, the seller shall continue its prior tax
28 treatment of charges to customers with addresses subject to
29 competing claims. For purposes of this subsection, "prior tax
30 treatment" means the practice of collecting and remitting or
31 not collecting and remitting tax during periods prior to

1 discovery of the competing claims. The seller has no liability
2 to any affected municipality for amounts not collected and
3 remitted before the agreement was implemented, except to the
4 extent that the seller's prior tax treatment was confirmed as
5 correct in the agreement.

6 (6) If a list or update furnished pursuant to
7 subsection (3) contains all the elements required by that
8 subsection, but such information does not conform with address
9 information in the seller's records, the seller may so notify
10 the municipality that furnished the list or update. The
11 notification shall identify the portion of the list or update
12 that is in question and describe the nature of the problem. If
13 the seller furnishes such a notification within 60 days after
14 first receiving the list or update from the municipality, the
15 seller shall not be obligated to collect and remit the tax
16 with respect to the portion of the list or update at issue
17 until the next ensuing January 1, April 1, July 1, or October
18 1 which is at least 60 days after the municipality furnishes
19 the seller with information which resolves the issue raised by
20 the seller.

21 Section 4. Section 166.234, Florida Statutes, is
22 created to read:

23 166.234 Public service tax; administrative provisions;
24 rights and remedies.--

25 (1) A municipality may, during the seller's normal
26 business hours at the official location of the seller's books
27 and records, audit the records of any seller of a service that
28 is taxable by the municipality under s. 166.231 or s. 166.232,
29 for the purpose of ascertaining whether taxable services have
30 been provided or the correctness of any return that has been
31 filed or payment that has been made, if the municipality's

1 power to assess tax or grant a refund is not barred by the
2 applicable limitations period. Each such seller must provide
3 to the municipality, upon 60 days' written notice of intent to
4 audit from the municipality, access to applicable records for
5 such service, except an extension of this 60-day period must
6 be granted if reasonably requested by the seller. The seller
7 may at its option waive the 60-day notice requirement. If
8 either the municipality or the seller requires an additional
9 extension, it must give notice to the other no less than 30
10 days before the existing extension expires, except in cases of
11 bona fide emergency or waiver of the notice requirement by the
12 other party. In an audit, the seller is liable only for its
13 taxable accounts collected which correspond to the information
14 provided to it by the municipality under s. 166.233(3). As
15 used in this section, "applicable records" means records kept
16 in the ordinary course of business which establish the
17 collection and remittance of taxes due. Such applicable
18 records may be provided to the municipality on an electronic
19 medium if agreed to by the seller and the municipality. No
20 fee or any portion of a fee for audits conducted on behalf of
21 a municipality shall be based upon the amount assessed or
22 collected as a result of the audit, and no determination based
23 upon an audit conducted in violation of this prohibition shall
24 be valid.

25 (2) Each seller of services that are taxable under s.
26 166.231 or s. 166.232 shall preserve applicable records
27 relating to such taxes until the expiration of the time within
28 which the municipality may make an assessment with respect to
29 that tax; however, a seller is not required to retain
30 duplicative or redundant records.

31

1 (3) Before auditing a seller under subsection (1), the
2 municipality shall, upon request of the seller, discuss with
3 the seller the municipality's proposed audit methodology. The
4 municipality shall prepare and furnish to the seller a report
5 of each audit which identifies the nature of any deficiency or
6 overpayment, the amount thereof, and the manner in which the
7 amount was computed. In addition, the municipality, upon
8 request and no less than 45 days before issuing a
9 determination under subsection (8), shall furnish the seller
10 with all other information or material in possession of the
11 municipality or its agents which is necessary to supplement
12 the audit findings.

13 (4)(a) A municipality may issue a proposed assessment
14 of tax levied under s. 166.231 or s. 166.232 within 3 years
15 after the date the tax was due. However, this limitation is
16 tolled for 1 year if within the 3-year period the municipality
17 issues to the seller a notice of intent to audit. If the
18 audit cannot be completed prior to the expiration of this
19 limitation period as extended by tolling, and such condition
20 is due to the seller's refusal or delay in allowing access to
21 applicable records, the municipality may make a proposed
22 assessment from an estimate based upon the best information
23 available for the taxable period, unless the seller agrees in
24 writing to extend the limitations period. The municipality
25 may also make a proposed assessment from such an estimate if,
26 notwithstanding agreed extensions of the limitations period to
27 a date which is 3 years following issuance of the notice of
28 intent to audit, the seller does not allow access to
29 applicable records prior to such date.

30 (b) A seller may apply to a municipality for refund
31 of, or may take a credit for, any overpayment of tax or

1 interest or penalty thereon within 3 years following
2 remittance by the seller, and the municipality must refund or
3 allow the seller credit for such overpayments as were remitted
4 to the municipality. However, in the case of an overpayment
5 which the seller has previously refunded or credited to a
6 purchaser in accordance with subsection (6), the limitation
7 period for the seller's refund application or credit shall
8 expire 3 years following the seller's remittance to the
9 municipality or 60 days following the seller's issuance of the
10 refund or credit to the purchaser, whichever is later.

11 (c) Upon expiration of the periods set forth in this
12 subsection, the municipality's right to assess tax, interest,
13 or penalty and the seller's right to apply for a refund or
14 credit expire and are barred, unless fraud has occurred;
15 however, sellers and municipalities may enter into agreements
16 to extend these periods.

17 (5) Notwithstanding subsection (4), a municipality
18 shall offset a seller's overpayment of any tax, interest, or
19 penalty revealed by an audit against any deficiency of tax,
20 interest, or penalty which is determined to be due for the
21 same audit period, and such offsets must be reflected in any
22 proposed assessment. If the overpayments by the seller exceed
23 the deficiency, the municipality must refund to the seller the
24 amount by which the aggregate overpayments exceed the total
25 deficiency. Absent proof to the contrary, the methodology
26 that is employed in computing the amount of a deficiency is
27 presumed to yield an appropriate computation of the amount of
28 any overpayments. As used in subsection (4) and this
29 subsection, "overpayment" to a municipality means and includes
30 all remittances of public service tax, interest, or penalty
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1 which were not due to the municipality, including amounts
2 properly collected but remitted to the incorrect municipality.

3 (6) Any purchaser of a service may request from a
4 seller a refund of, or credit for, taxes collected from the
5 purchaser upon the ground that the amounts collected were not
6 due to any municipality. The seller shall issue the refund or
7 allow a credit to the purchaser entitled thereto, if the
8 request is made within 3 years following collection of the tax
9 from the purchaser. In any event, a seller shall issue a
10 refund or credit to a purchaser within 45 days following the
11 seller's determination of the amount of taxes collected from
12 the purchaser within the preceding 3 years that were not due
13 to any municipality.

14 (7) Municipalities are authorized to assess interest
15 and penalties in accordance with this subsection for failure
16 to pay any tax when due or to file any required return, except
17 that no penalty shall be assessed absent willful neglect,
18 willful negligence, or fraud. Interest may be assessed at a
19 maximum rate of 1 percent per month of the delinquent tax from
20 the date the tax was due until paid. Penalties may be
21 assessed at a maximum rate of 5 percent per month of the
22 delinquent tax, not to exceed a total penalty of 25 percent,
23 except that a municipality may provide that in no event will
24 the penalty for failure to file a return be less than \$15. In
25 the case of a fraudulent return or a willful intent to evade
26 payment of the tax, the seller making such fraudulent return
27 or willfully attempting to evade payment of the tax, shall be
28 liable for a specific penalty of 100 percent of the tax.
29 Interest and penalties shall be computed on the net tax due
30 after application of any overpayments, and are subject to
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1 compromise pursuant to subsection (14). Interest or penalties
2 and the rates thereof shall be authorized by ordinance.

3 (8) Any proposed assessment or finding of amounts due
4 the seller constitutes a determination of the municipality for
5 purposes of this section. A determination must separately
6 state the amounts of tax, interest, and penalty claimed to be
7 due or to be refunded, must be accompanied by a written
8 narrative explanation of the basis for the municipality's
9 determinations, must inform the seller of the remedies
10 available to it if it disagrees with any such determination,
11 and must state the consequences of the seller's failure to
12 comply with any demand of the municipality which is stated in
13 the determination.

14 (9) A seller may file with the municipality a written
15 protest of any determination within 60 days after the
16 determination is issued. The municipality must consider the
17 protest and must, within 60 days, issue a written notice of
18 decision to the seller. The seller may petition the
19 municipality for reconsideration of a notice of decision
20 within 30 days after the issuance of the notice, and,
21 following reconsideration of such a petition, the municipality
22 must, within 30 days, issue a written notice of
23 reconsideration to the seller.

24 (10) A determination becomes final 60 days after the
25 date of issuance, unless the seller, before the 60-day period
26 expires, has filed a protest or secured a written extension of
27 time within which to file a protest. If the seller has
28 secured a written extension of time and fails to file a
29 protest within the extended time period, the proposed
30 assessment becomes a final assessment at the expiration of the
31 extended filing period. If a protest is timely filed and the

1 seller and the municipality are unable to resolve the disputed
2 issues, the determination becomes final as of the date of
3 issuance of the notice of decision, unless the seller timely
4 files a petition for reconsideration. If a petition for
5 reconsideration is timely filed, the determination becomes
6 final upon issuance of a notice of reconsideration.

7 (11) A notice of decision or a notice of
8 reconsideration must address each issue raised in the protest
9 or petition, must explain the reasoning underlying the
10 conclusions reached, and must advise the seller of the
11 remedies available to it if it disagrees with the
12 municipality's disposition of the issues.

13 (12) A seller may contest the legality of any
14 determination by filing an action in circuit court within 60
15 days after the date the determination becomes final. However,
16 in any action filed in circuit court to contest the legality
17 of any tax, penalty, or interest assessed under this section,
18 the plaintiff must pay the municipality the amount of the tax,
19 penalty, and accrued interest which is not being contested by
20 the seller. Venue lies in the county where the municipality
21 is located. The defendant in any such action is the
22 municipality.

23 (13) A seller's failure to protest a determination
24 under this section administratively or judicially does not
25 waive or impair the seller's right to seek refund of any
26 overpayment within the time allowed under subsection (4).

27 (14) A seller's liability for any tax, interest, or
28 penalty may be settled or compromised by the municipality upon
29 the grounds of doubt as to liability or doubt as to the
30 collectibility of such tax, interest, or penalty. A
31 municipality and a seller may enter into a written closing

1 agreement that reflects the terms of any settlement or
2 compromise. When such a closing agreement has been approved
3 on behalf of the municipality and the seller, it is final,
4 conclusive, and binding on the parties with respect to all
5 matters set forth therein; and, except upon a showing of fraud
6 or misrepresentation of material fact, additional assessment
7 may not be made against the seller for the tax, interest, or
8 penalty specified in the closing agreement for the time period
9 specified in the closing agreement, and the seller may not
10 institute any judicial or administrative proceeding to recover
11 any tax, interest, or penalty paid under the closing
12 agreement. In issuing a determination, a municipality must
13 include in its notification thereof to the seller the names of
14 the persons authorized to approve compromises and to execute
15 closing agreements. A municipality may also enter into
16 agreements for scheduling payments of taxes, interest, and
17 penalties, which agreements must recognize both the seller's
18 financial condition and the best interest of the municipality,
19 if the seller gives accurate, current information and meets
20 all other tax obligations on schedule.

21 (15) All notices of intent to audit, determinations,
22 notices of decisions, and notices of reconsideration issued
23 under this section must be transmitted to the seller by
24 certified mail, return receipt requested, and the date of
25 issuance is the postmark date of the transmittal. All
26 protests and petitions for reconsideration are timely filed if
27 postmarked or received by the municipality within the time
28 prescribed by this section. If mailed, protests and petitions
29 must be transmitted by certified mail, return receipt
30 requested.

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1 (16) A seller may pay any contested amount, in whole
2 or in part, at any time, and the payment does not impair any
3 of the seller's remedies as provided in this section.

4 (17) Each municipality that levies the public service
5 tax shall furnish sellers with prompt, accurate responses to
6 questions and to requests for tax assistance. In the event a
7 law is enacted requiring payment of interest on refunds of
8 taxes paid pursuant to chapter 203 or chapter 212,
9 municipalities shall pay interest on public service tax
10 refunds at the rate required by such law.

11 (18) In all matters connected with the administration
12 of the public service tax, sellers have the right:

13 (a) To be represented by counsel or other qualified
14 representatives;

15 (b) To procedural safeguards with respect to the
16 recording of interviews during tax determination processes
17 conducted by the municipality; and

18 (c) To have audits, inspections of records, and
19 interviews conducted at a reasonable time and place.

20 (19) Municipalities may communicate with each other
21 concerning the following:

22 (a) Technical information concerning a seller's tax
23 and accounting system necessary to conduct an accurate and
24 efficient audit of a specific company; however, in no event
25 shall the information include any data relevant to a specific
26 purchaser or account or the seller's tax treatment of specific
27 services;

28 (b) Names and addresses of companies selling taxable
29 services within their respective jurisdictions; and

30 (c) The name of any company issued a refund of taxes
31 and the total amount of taxes refunded to such company.

1 (20) Except as otherwise provided in this subsection,
2 a municipality may not assess or attempt to assess a seller
3 for any costs incurred by or charged to the municipality in
4 connection with performing an audit of the seller's books and
5 records, including all travel expenses. Any assessment or
6 proposed assessment of such costs shall be void and
7 unenforceable. A municipality may, however, assess and
8 collect from the seller the reasonable travel expenses
9 incurred by or charged to the municipality in connection with
10 performing an audit of the seller's books and records if the
11 seller received timely notice requesting access to such books
12 and records in accordance with subsection (1) and the seller
13 failed or refused to allow such access and did not propose an
14 alternative date on which the audit was to commence, or if the
15 seller and the municipality agreed in writing to an
16 alternative date on which the audit was to commence but the
17 seller then failed or refused to permit reasonable access to
18 its books and records on the alternative date.

19 (21) The provisions of this section, other than
20 subsection (6), shall not apply to the extent that the seller
21 is the municipality levying the tax under audit or a separate
22 utility authority, board, or commission of such municipality.

23 Section 5. (1) No later than September 1, 1997, each
24 municipality levying a tax under s. 166.231 or s. 166.232,
25 Florida Statutes, shall furnish to the Department of Revenue a
26 notification that specifies the services taxed by such
27 municipality under the authority of either section, including
28 any election chosen by the municipality under s.
29 166.231(9)(a), Florida Statutes; the rate of tax applied to
30 each service; the effective date of the levy; and the name,
31 mailing address, and telephone number of a person designated

1 by the municipality to respond to inquiries concerning the
2 tax. The notification must include such information for levies
3 with prior and future effective dates.

4 (2) Address listings and updates that conform to the
5 requirements of s. 166.231(10)(d), Florida Statutes, as in
6 effect before the effective date of this act, are in
7 compliance with this act and sellers may rely thereon, until
8 July 1, 1998. However, no later than January 1, 1998, each
9 municipality shall make available lists which conform to the
10 requirements of this act, and such lists shall have an
11 effective date of July 1, 1998.

12 (3) Section 166.234, Florida Statutes, as created by
13 this act, applies to all taxes, assessments, and audits for
14 periods before and after the effective date of this act,
15 except as follows:

16 (a) Provisions requiring the performance of acts
17 before the commencement of an audit do not apply to audits
18 commenced before the effective date of this act.

19 (b) Nothing in s. 166.234, Florida Statutes, affects
20 taxes and assessments that have been resolved by concession of
21 liability and payment, by settlement, or by other means,
22 before the effective date of this act.

23 (c) The requirements that municipalities furnish the
24 information prescribed in s. 166.234(3) and (8), Florida
25 Statutes, do not apply to determinations issued before the
26 effective date of this act, except that upon the seller's
27 request a municipality shall furnish such information to the
28 seller. No notice, report, determination, protest, petition,
29 or other document issued before the effective date of this act
30 is invalid merely because its contents or the manner or timing
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1 of its transmittal do not comply with s. 166.234, Florida
2 Statutes.

3 (d) In the case of audits that are the subject of
4 pending litigation as of the effective date of this act, the
5 requirements and limitations of s. 166.234(12), Florida
6 Statutes, do not apply to actions filed before the effective
7 date of this act.

8 (e) The provisions of s. 166.234(4)(a), Florida
9 Statutes, shall not apply to taxes due prior to July 1, 1994.
10 A proposed assessment for taxes due prior to July 1, 1994, may
11 be issued on or before July 1, 1997, for any audit period
12 beginning on or after July 1, 1992, which is specified in a
13 notice of intent to audit issued before March 1, 1997. After
14 July 1, 1997, the municipality's right to assess such taxes
15 shall expire and be barred. However, if the municipality is
16 unable to complete such an audit due to the seller's refusal
17 or delay in allowing access to applicable records, the
18 municipality may make an estimate based upon the best
19 information available unless the seller agrees in writing to
20 extend the limitations period.

21 Section 6. Subsection (10) is added to section 203.01,
22 Florida Statutes, 1996 Supplement, to read:

23 203.01 Tax on gross receipts for utility services.--

24 (10) Notwithstanding the provisions of subsection (5)
25 and s. 212.07(2), sums that were charged or billed as taxes
26 under this section and chapter 212 and that were remitted to
27 the state in full as taxes shall not be subject to refund by
28 the state or by the utility which remitted the sums, when the
29 amount remitted was not in excess of the amount of tax imposed
30 by chapter 212 and this section.

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1 Section 7. Subsection (4) is added to section 203.63,
2 Florida Statutes, to read:

3 203.63 Tax on interstate and international
4 telecommunication services.--

5 (4) Notwithstanding the provisions of subsection (1)
6 and s. 212.07(2), sums that were charged or billed as taxes
7 under this section and chapter 212 and that were remitted to
8 the state in full as taxes shall not be subject to refund by
9 the state or by the utility which remitted the sums, when the
10 amount remitted was not in excess of the amount of tax imposed
11 by chapter 212 and this section.

12 Section 8. It is the intent of the Legislature that
13 the creation of s. 203.01(10), Florida Statutes, 1996
14 Supplement, and s. 203.63(4), Florida Statutes, by this act
15 are remedial and are intended to clarify existing law.

16 Section 9. The sum of \$35,000 is appropriated to the
17 Department of Revenue from the Administrative Trust Fund for
18 fiscal year 1997-1998, and one full-time-equivalent position
19 is authorized, for the purpose of performing the functions
20 identified in s. 166.233(2), Florida Statutes, as created by
21 this act.

22 Section 10. If any provision of this act or the
23 application thereof to any person or circumstance is held
24 invalid, the invalidity shall not affect other provisions or
25 applications of the act which can be given effect without the
26 invalid provision or application, and to this end the
27 provisions of this act are declared severable.

28 Section 11. This act shall take effect upon becoming a
29 law.

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